

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION V

IN RE:

SATRALLOY, INC.
STEUBENVILLE, OHIO,

Respondent.

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)
) Docket No. TSCA-V-C-53-89
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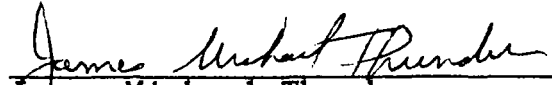
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) RESPONDENT'S MOTION FOR
) AN ACCELERATED DECISION
)

Respondent Satralloy, Inc., respectfully moves the Court for an Accelerated Decision pursuant to 40 C.F.R. § 22.20(a). As part of this Motion, the Respondent is filing its pre-hearing exchange as originally ordered by the Court by Order dated August 16, 1989, and as amended by Order dated January 24, 1990, extending the date for the filing of said exchange to March 1, 1990.

A Memorandum of Law in Support of this Motion is attached hereto.

Should there be any hearing in this proceeding, Respondent respectfully requests that it be held in Steubenville, Ohio, or Cleveland, Ohio, in order to keep the expenses for the Respondent to a minimum.

Respectfully submitted,


James Michael Thunder
SQUIRE, SANDERS & DEMPSEY
1800 Huntington Building
Cleveland, Ohio 44116
216/687-8719

Counsel for Respondent,
Satralloy, Inc.

EPA Region 5 Records Ctr.



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CERTIFICATE OF SERVICE

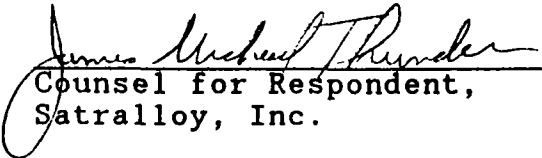
The undersigned hereby certifies that the ORIGINAL of the foregoing RESPONDENT'S MOTION FOR AN ACCELERATED DECISION was mailed this 28th day of February, 1990, to:

Regional Hearing Clerk
U.S. Environmental Protection
Agency, Region V
230 South Dearborn Street/
Mail Code 5MF-14
Chicago, Illinois 60604

and copies were mailed on the same date to:

Monica Smyth, Esq.
Assistant Regional Counsel
Office of Regional Counsel (5CA-TUB-3)
U.S. Environmental Protection
Agency, Region V
230 South Dearborn Street
Chicago, Illinois 60604

The Hon. Frank W. Vanderheyden
Administrative Law Judge
Environmental Protection Agency
401 M Street, S.W./Mail Code A-110
Washington, D.C. 20460


Counsel for Respondent,
Satralloy, Inc.

:

MEMORANDUM OF LAW IN SUPPORT OF RESPONDENT'S
MOTION FOR AN ACCELERATED DECISION

INTRODUCTION

Respondent Satralloy, Inc., has moved for an Accelerated Decision pursuant to 40 C.F.R. § 22.20(a). The Respondent maintains that it is entitled to judgment as to some of the allegations made in the Complaint and is entitled to a judgment finding that the Respondent is unable to pay any civil penalty. The standard for granting this Motion is whether or not there exists a genuine issue of material fact and, if not, whether the Respondent is entitled to judgment as a matter of law as to all or any part of the instant proceeding. Id.

- I. COUNT I: THERE IS NO GENUINE ISSUE OF MATERIAL FACT AND RESPONDENT IS ENTITLED TO JUDGMENT AS A MATTER OF LAW ON THE ISSUE OF ANY LIABILITY UNDER 40 C.F.R. § 761.30(a)(1)(xii).

The Complaint alleges that Respondent violated 40 C.F.R. § 761.30(a)(1)(xii) with respect to developing and maintaining records of inspection of two PCB Transformers. Count I, ¶¶ 14, 15, 16. The Respondent maintains that the cited regulation does not require the creation of records; it merely requires persons to maintain any records after the disposal of PCB Transformers.

For elaboration of this argument, Respondent incorporates

NON-RESPONSIVE

NON-RESPONSIVE

NON-RESPONSIVE See Attachment 2 (Affidavit of Mr. Louis

DiPaolo). In the instant case, the Complainant alleges that the two PCB Transformers in question had not been disposed of but had been stored for reuse. Complaint, ¶ 8. Hence, there is no genuine issue of material fact and Respondent is entitled to judgment as a matter of law with respect to this allegation.

II. COUNT I: THERE IS NO GENUINE ISSUE OF MATERIAL FACT AND RESPONDENT IS ENTITLED TO JUDGMENT AS A MATTER OF LAW THAT THE AMOUNT OF THE PROPOSED PENALTY FOR ANY LIABILITY UNDER 40 C.F.R. § 761.30(a)(1)(vi) IS CONTRARY TO POLICY.

The Complaint alleges that Respondent violated 40 C.F.R. § 761.30(a)(1)(vi) with respect to registering the same two PCB Transformers with certain fire response personnel. Count I, ¶¶ 11, 12, 13. The Respondent maintains that the Complaint's proposed penalty for such alleged violation is contrary to the Agency's civil penalty policy. For a full elaboration of this argument, the Respondent incorporates **NON-RESPONSIVE** ■, at 2-4. See Attachment 2 (Affidavit of Mr. Louis DiPaolo); Attachment 6 (Region V Penalty Policy).

Based on the foregoing argument, the Respondent maintains that there is no genuine issue of material fact and Respondent is entitled to judgment as a matter of law on the issue that the proposed penalty for any liability under 40 C.F.R. § 761.30(a)(1)(vi) is contrary to policy.

III. COUNT II: THERE IS NO GENUINE ISSUE OF MATERIALS FACT AND RESPONDENT IS ENTITLED TO JUDGMENT AS A MATTER OF LAW ON THE ISSUE OF ANY LIABILITY UNDER 40 C.F.R. § 761.40(a)(3).

The Complaint alleges that the Respondent failed to mark 53 large high voltage capacitors in violation of 40 C.F.R. § 761.40(a)(3). Yet, 50 of these capacitors had never been in use. See Attachment 2 (Affidavit of Mr. Louis DiPaolo), Attachment 3 (government inspection report) at 4. Hence, the cited regulation is inapplicable. For a fuller elaboration of this argument, the Respondent incorporates NON-RESPONSIVE at 4-5.

Accordingly, the Respondent maintains that there is no genuine issue of material fact and Respondent is entitled to judgment as a matter of law with respect to any liability under 40 C.F.R. § 761.40(a)(3) with respect to 50 of the 53 capacitors.

IV. IN LIGHT OF ALL OF THE CIRCUMSTANCES OF THIS CASE, RESPONDENT SATRALLOY, INC., SHOULD NOT PAY ANY CIVIL PENALTY.

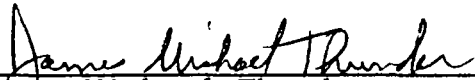
In light of all of the circumstances of this case, including the Respondent's financial condition, the Respondent should not pay any civil penalty for any violations alleged in the Complaint. The Respondent incorporates the seven equitable reasons for not assessing a civil penalty set out in NON-RESPONSIVE, at 5-6. In addition, Respondent has no income, has had no income, and expects no income with which to pay any civil penalty. See NON-RESPONSIVE at 6; Attachment 2; Attachment 4 (the financial documentation referenced in NON-RESPONSIVE at 6);

Attachment 5 (cash flow summary for Satralloy, Inc. for the years 1983 to 1988). Accordingly, the Respondent maintains that no civil penalty should be assessed against it.

CONCLUSION

The Respondent maintains that it is entitled to judgment as a matter of law with respect to numerous allegations made in the Complaint. With respect to any remaining allegations, the Respondent maintains that no civil penalty should be assessed against it.

Respectfully submitted,


James Michael Thunder
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1800 Huntington Building
Cleveland, Ohio 44116
216/687-8719

Counsel for Respondent,
Satralloy, Inc.

LIST OF ATTACHMENTS

NON- RESPONSIVE

Attachment 2: Affidavit of Mr. Louis DiPaolo.

Attachment 3: Government Inspection Report.

Attachment 4: Financial Documentation Referenced in
NON- RESPONSIVE.

Attachment 5: Cash Flow Summary for Respondent for the Years
1983 to 1988.

Attachment 6: Region V October 1986 Civil Penalty Policy.

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IN RE:

Docket No. TSCA-V-C-53-89

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COUNTY OF JEFFERSON) SS:

2. The plant was built in 1958 by Vanadium Corporation of America. Vanadium Corporation of America subsequently merged in the 1960's and then operated as Foote Mineral Company. At the

height of its activity, it utilized six furnaces, employed 260 individuals, and smelted approximately 7500 tons of ferrochromium per month.

3. From 1974 to 1981, I was Plant Controller, Satralloy, Inc.; from 1981 to 1984, I was Plant Manager/Controller, Satralloy, Inc.; from 1984 to present, I have been and am Plant Manager, Satra Concentrates, Inc.

4. In December 1973, Satralloy, Inc., purchased the plant from Foote Mineral. During 1974, Satralloy, Inc., used all of its six furnaces; however, by 1976, due to economic conditions, only three or four furnaces were being utilized.

5. Prior to 1980, Satralloy shut down most of the operations at the plant. By May 1980, all operations had ceased because of the depressed market for product.

6. Later in 1980, Satralloy installed some equipment that would allow it to recover (i.e., extract) ferrochromium from the slag that had been produced as a by-product of the smelting operation. This process does not utilize any furnaces; it is simply a mechanical operation of crushing and separating.

7. From approximately May 1981, to October 1982, Satralloy smelted 94,200 gross tons of chromite ore for the benefit of the owner of the ore. No smelting operations have been conducted at the plant since October 1982.

8. In December 1982, Satralloy ceased extraction operations. Mr. Maloney left the employ of Satralloy. He had been responsible for compliance with TSCA regulations.

9. In 1983 and 1984, I and two other persons were the sole employees of Satralloy. We remained on the payroll simply in a caretaker capacity.

10. In December 1984, Satra Concentrates, Inc., leased certain parcels of land from Satralloy, and purchased the necessary equipment, crushers and separators, to operate the extraction facilities. After this date, Satralloy has had no employees, no operations, and no income from operations.

11. In 1985, Satra Concentrates undertook limited extraction operations. During 1986 and 1987, Satra Concentrates' extraction operations were intermittent. In 1988, the operations were conducted only for a half year. Operations are conducted out of doors; during good weather, there may be 20 employees.

12. I have read the Motions for Accelerated Decision in the above-captioned cases. I have also read each of the attachments.

13. I verify as true each statement of fact made in the Motions and their Attachments, except for the Government Inspection Report.

14. In early January 1990, I contacted Mr. Ray Vogt of the New Alexandria Volunteer Fire Department. He assured me that the personnel of the Fire Department are trained to fight electrical and industrial fires and are knowledgeable about PCB transformers and capacitors.

15. On a monthly basis, I prepare a Cash Activity report for Satra Concentrates. The December 1989, report attached

to the Motion for an Accelerated Decision by Respondent Satra Concentrates as Attachment 6 is illustrative of the type of income and expenses for Satra Concentrates.

FURTHER AFFIANT SAYETH NAUGHT.

Louis DiPaolo
LOUIS DIPAOLO

27th SWORN TO BEFORE ME and Subscribed in my presence this
27 day of February, 1990.

Thomas Paul Olszowy
Notary Public

THOMAS PAUL OLSZOWY, Notary Public
State of Ohio
My Commission Expires January 18, 1995